Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

No. _____
October Term, 1997

In re the Marriage of

BRUCE EDWARD CAMPBELL,
Petitioner,

v.

JO LYNNE CAMPBELL,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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4388

QUESTIONS PRESENTED FOR REVIEW

I: Should a Minnesota district court retain jurisdiction over post-dissolution matters involving a parent and children who are enrolled members of an Indian tribe where one parent has legal domicile on an Indian reservation and the other parent now has legal domicile in a State other than the State of Minnesota?

II: Should a person be held in contempt for his failure to obtain a tribal court order for child support withholding when the Minnesota district court entering the order declines to allow the tribal court itself to entertain the matter or to follow tribal law and where the spouse asking for the contempt order has declined to request relief for herself in tribal court?

III: Whether comity or United States Supreme Court precedent obliges a State court to allow a tribal court to assert jurisdiction over a family law matter where the tribe has drafted a family law code and established a competent tribal court system since the date of the State court dissolution of the marriage?

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PETITION FOR A WRIT OF CERTIORARI

Bruce Campbell asks that a writ of certiorari issue to review the Order of the Supreme Court of the State of Minnesota, filed August 5, 1997, declining review of a decision of the Minnesota Court of Appeals, and the underlying decision of the Minnesota Court of Appeals in this matter filed June 3, 1997.

OPINIONS BELOW

This Petition seeks review of an Order of the Minnesota Supreme Court, *In re the Marriage of Bruce Edward Campbell v. Jo Lynne Campbell*, No. C8-96-2447, (Minn. August 5, 1997), reprinted at page 1a of the Appendix, declining review of the now-final, unreported decision of the Minnesota Court of Appeals, *In re Marriage of Campbell*, 1997 WL 292321, (Minn. Ct. App. June 3, 1997), reprinted beginning at page 2a of the Appendix.

STATEMENT OF JURISDICTION

This Petition seeks review of the Order of the Minnesota Supreme Court declining review in this case filed on August 5, 1997, as well as the underlying decision of the Minnesota Court of Appeals. Therefore, this United States Supreme Court has jurisdiction under that permitted by 28 U.S.C., Section 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 8, holds that "[t]he Congress shall have Power...To regulate Commerce...with the Indian Tribes."

Article III, Section 2, indicates that the "judicial power [of the United States] shall extend to all Cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their authority...."

28 U.S.C., Section 1360:

(a) [Minnesota] shall have jurisdiction over civil causes of action...to which Indians are parties...to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of such general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State....

* * *

(b) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe...in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

STATEMENT OF THE CASE

Following a hearing requesting an increase in child support, a Minnesota district court commanded Bruce Campbell to pay significantly increased child support and to have this child support paid through withholding from Campbell's share of tribal gambling payments, Appendix D. Mr. Campbell declined to follow the commands of the district court since Jo Lynne Campbell had declined to ask for relief

in tribal court herself.

Jo Lynne Campbell then asked the same Minnesota State district court to hold Bruce Campbell, her former husband, in contempt for not paying child support and for his failure to obtain an order from the Prairie Island Tribal Court withholding child support from the tribal per capita payments Campbell receives from the Tribe.[1]

At the contempt hearing, Bruce Campbell agreed to pay his child support obligations immediately, but he also raised the issues of jurisdiction and comity, Appendix E, 23a.. Campbell argued that family law code and the per capita distribution law of the Prairie Island Indian Community differ from the law of the State of Minnesota.[2] Bruce Campbell argued that he could not be forced to demand for the benefit of his estranged, divorced wife who is not a tribal member, that the Prairie Island Tribal Court follow Minnesota law.

Campbell provided proof of the enactment of a family code by the Prairie Island Indian Community to the district court and the activity of a
tribal court and suggested that comity should preclude the Minnesota district court from acting until the Prairie Island Tribal Court has had the opportunity to grant Jo Lynne

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1. The Notice of Motion and Motion, dated October 1, 1996, ask that Campbell be held in "constructive civil contempt of the [Minnesota District] Court's order...for failure to pay child support... [and] for failure to obtain a Tribal Court Order for the automatic withholding of child support from his per capita payments...."

2. Hearing Transcript, October 18, 1996, at 5.

Campbell the relief she had demanded from her husband.

Bruce Campbell also, on jurisdictional grounds, opposed the order from a Minnesota district court to him to obtain a tribal court order for direct withholding of his child support payments. Mr. Campbell believes that where an Indian Community has legally asserted its rights to regulate family law matters, including child support, the tribe must exercise its own jurisdiction using its own enacted laws, Title 3, Domestic Relations of the Prairie Island Judicial Code.[3]

Bruce Campbell also argued that a Minnesota district court should not retain jurisdiction over post-dissolution matters where the parties to the dissolution now have domicile in legal jurisdictions other than the State of Minnesota.

It is undisputed that the children of the marriage and the Petitioner, Bruce Campbell, remain enrolled members of this Indian Community.

The district court rejected every single argument raised by Bruce Campbell. In its two-and-a-half page memorandum, Appendix C, the district court cited Public Law 280, 28 U.S.C., Section 1360 (a), for the proposition that Minnesota states courts have "jurisdiction over civil causes of action...to which Indians are parties," 14a. The district court

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3. District Court Judge Peder Hong allowed Counsel for Bruce Campbell to provide a short memorandum following the hearing. This November 4, 1996, submission also discussed jurisdiction, venue, and comity issues related to the Prairie Island Tribal Court and its Judicial Code.

also held that Bruce Campbell's having voluntarily invoked the jurisdiction of the state courts, that jurisdiction would continue apace unless and until waived by the parties.

Bruce Campbell appealed to the Minnesota Court of Appeals, which is, generally speaking, the ultimate forum for family law issues in Minnesota.

The Minnesota Court of Appeals held that the trial court had continuing jurisdiction over the parties relative to the dissolution judgment and decree on account of "the fact that [Bruce Campbell] voluntarily invoked the district court's jurisdiction by filing his 1989 dissolution petition," 6a. The Court of Appeals held too this jurisdiction ought not be given up to the Prairie Island Tribal Court, citing *Desjarlait v. Desjarlait*, 379 N.W.2d 139 (Minn. Ct. App. 1985), notwithstanding that the Red Lake Band in *Desjarlait* had completely and formally relinquished family law matters in favor of the State district court. The Prairie Island Community has not given up such jurisdiction over family law issues.

There still exists a Minnesota District Court order directing Bruce Campbell, an individual tribal member, to request relief from a tribal court for the benefit of a non-Indian person. Jo Lynne Campbell has declined to request the relief which she could have gotten from the legally-competent tribal court.

The Prairie Island Indian Community has only recently exercised its unique sovereignty, establishing a tribal court system and drafting its own tribal law codes.

This Petition to the United States Supreme Court

followed.

REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE

The Minnesota District Court for Goodhue County insisted on maintaining its jurisdiction in matters related to the Campbell dissolution where Bruce Campbell had returned to his domicile on the Prairie Island Indian reservation and his former spouse had acquired domicile in another State, Alabama. What a federal district court cannot do, namely divest a tribal court of its jurisdiction, a state court cannot do.[4]

As early as its decision in *Ex parte Crow Dog*, 109 U.S. 556 (1883), the United States Supreme Court has determined that tribal courts have the right to adjudicate matters based on tribal law which involve tribal members. Moreover, Indians have not been divested, either implicitly or affirmatively, of civil jurisdiction over individuals who are not tribal members, *National Farmers Union Insurance Companies v. Crow Tribe of Indians*, 471 U.S. 845, 853-55 (1985). The federal policy favoring tribal self-determination and self-government requires courts other than tribal courts to

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4. This *Campbell* case has strong parallels to the *Bryan v. Itasca County* case, 426 U.S. 373 (1975), where the State of Minnesota asserted the right to tax personal property on an Indian reservation. Minnesota's jurisprudence tends toward the absoluteness of the law of the Medes and the Persians, that is, where a legal precept or provision is not flatly stated, it need not be considered to be the law. Also, Minnesota has a strongly independent streak which makes the State unlikely to hand over its place of honor to an Indian sovereign.

stay their review until a tribal court has determined that it has jurisdiction and has acted, *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 16 (1987).

As this Court held in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 51 (1978), "[t]ribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians."

The tribal interests in the present case include (1) the well-being of two minor children who are enrolled members of the Prairie Island Indian Community, a federally-recognized Indian tribe; (2) a tribally-generated per capita payment made to Bruce Campbell; and, (3) the development of a tribal family law code and a tribal court system. These are significant tribal interests. See *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980); and, *Montana v. United States*, 450 U.S. 544 (1981).

Jo Lynne Campbell, respondent, has implicitly consented to tribal court jurisdiction by demanding that her former spouse obtain a court order from the tribal court for child support payments. Her demands directly effect the political integrity and the economic well-being of the Prairie Island tribe and its members.

The Minnesota Court of Appeals mistakenly suggested that "[t]he district court does not require the tribe to do anything and the court's order does not refer to tribal money," 8a. What is accurate is that the district court previously ordered Mr. Campbell to have his income withheld by the "Prairie Island Mdewakanton Dakota Community, and

forwarded to Goodhue County Social Services," and that Bruce Campbell "shall be solely responsible for obtaining a valid Tribal Court Order for income withholding...," 22a.

The tribe is being judicially required to follow the dictates of a Minnesota court whose law remains inconsistent with the newly-enacted tribal law. The Minnesota child support guidelines differ significantly from the Prairie Island child support guidelines, 3 Prairie Island Judicial Code, Domestic Relations, Section 7.a.; Minnesota Statutes, Section 518.551 , as do the income withholding amounts of the two laws.[5]

Bryan v. Itasca County Minnesota, 426 U.S. 373, 392 (1976), holds that "Indians stand in a special relation to the federal government from which the states are excluded unless the Congress has manifested a clear purpose to terminate * * * immunity and [to] allow states to treat Indians as part of the general community."

State court jurisdiction must not "undermine the authority of the tribal courts over Reservation affairs" nor "infringe on the right of Indians to govern themselves," *Williams v. Lee*, 358 U.S. 217, 223 (1959).

There is now an adequate Indian forum in the Prairie

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5. The actual differences between the two judicial codes are not material to this Petition so these provisions have not been reproduced in the Appendix. What is material is that Bruce Campbell has been required to ask a tribal court to enforce an order whose terms differ from that allowed by applicable tribal law.

Island tribal court, *Becker County Welfare Department v. Bellcourt*, 453 N.W.2d 543, 544 (Minn. Ct. App. 1990), a forum which did not exist within the Prairie Island tribe when Bruce Campbell first filed for divorce.

The Court of Appeals decision in a footnote proposes that "[t]here is no indication in the record that the Mdwakanton Dakota Tribe is asserting subject matter jurisdiction in this case *or in domestic matters in general*," footnote 5, (emphasis added). The fact that the tribe has now enacted a family law code and established a court to hear such matters puts the lie to the statement of the Minnesota Court of Appeals. What marks the entire Minnesota district court decision as well as the decision of the Minnesota Court of Appeals is a determined effort to retain jurisdiction. See *"The People of the States Where They Are Found Are Often Their Deadliest Enemies": The Indian Side of the Story of Indian Rights and Federalism*, Robert A. Williams, Jr., 38 Arizona L. Rev. 964 (1996).

The Minnesota case, *In re the Matter of the Custody of K.K.S.*, 508 N.W.2d 813 (Minn. Ct. App. 1993) (review denied, January 27, 1994), acknowledges concurrent jurisdiction in tribal and State trial courts as to family law matters. In *K.K.S.*, the State district court possessed the necessary awareness of comity to allow the tribal court to proceed.

The Prairie Island Tribal Court has indicated its willingness to enforce a child support order or a "foreign" judgment under the terms of its own tribal laws, 2 Prairie Island Judicial Code, Rule 39, as amended. Given that Jo Lynne Campbell has demanded that the Prairie Island Tribal Court issue an order for her direct benefit, she ought not

complain that she does not want the Tribal Court to acquire jurisdiction to entertain her demand. "If state-court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law," *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 15 (1987). See also, *Duluth Lumber & Plywood Co. v. Delta Development. Inc.*, 281 N.W.2d 377, 381 (Minn. 1979).

There is no clear State interest in Minnesota's courts retaining jurisdiction since Minnesota does not provide support or public assistance to Jo Lynne Campbell or to the children in Alabama.[6] Also, every penny of the money for Bruce Campbell's child support for his children derives directly from the business or gambling interests of the Prairie Island Indian Community.

The Minnesota Court of Appeals suggested that forum non conveniens had not been raised as an issue by Bruce Campbell. For fifteen years, Minnesota has used five factors to determine whether there is a constitutional basis for jurisdiction, *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 719-20 (Minn. 1985), cert. denied, 474 U.S. 1006 (1985). These factors constitute a forum non conveniens analysis: (1) the quantity of contacts with the forum state; (2) the nature and

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6. Counsel for Jo Lynne Campbell has demanded that the child support payments be made through Goodhue County Child Support services. The child support payments had been made directly to Jo Lynne before so it seems that this has no purpose other than to involve Goodhue County as a subdivision of the State of Minnesota.

quality of contacts; (3) the source and connection of the cause of action with these contacts; (4) the interest of the state in providing a forum; and, (5) the convenience of the parties. This jurisdictional issue was raised at the hearing, Transcript at 3: "[T]here is a question already of whether or not this [State district court] continues to have jurisdiction over the[se] particular proceedings."

Public Law 280, *op. cit.*, allows that "[a]ny tribal ordinance...hereafter adopted by an Indian tribe...in the exercise of any authority which it may possess, shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the civil causes of action pursuant to this section." The Prairie Island Indian Community has enacted its own family law legislation which should be enforced with respect to the demands made by Respondent Jo Lynne Campbell. The Courts of Minnesota have read Public Law 280 narrowly, ignoring the law's provisions which require that tribal law be given "full force and effect." In *Fisher v. District Court*, 424 U.S. 382 (1976), the Supreme Court avoided the State of Montana's claim of jurisdiction over adoption proceedings since Montana's position infringed on tribal sovereignty.

The courts of Minnesota have not properly abstained from competing with tribal courts and so have refused to follow the rule and the rationale developed in *Iowa Mutual Insurance Co.*, *op. cit.*, and other decisions. The touchstone is control of tribal members and their financial resources by the State of Minnesota.

As Alex Tallchief Skibine wrote in his review, "Braid of Feathers: Pluralism, Legitimacy, Sovereignty, and the

Importance of Tribal Court Jurisprudence,[7] 96 Columbia L. Rev. 557, 579 (1996):

> Jurisdictional disputes between the states and the tribes have proven to be some of the more divisive issues splitting the Indian and non-Indian communities. This fight over jurisdiction has to be understood as a fight over the control of natural and human resources on the reservations. Among other things, it involves the questions: who taxes, who controls zoning and the rate of development, and who regulates hunting and fishing. In short, it determines who controls the people and the environment in which they live.

CONCLUSION

For all these reasons, Petitioner Bruce Campbell asks this United States Supreme Court to grant review of this Petition and to issue a Writ of Certiorari to the appellate Courts of the State of Minnesota.

Dated at St. Paul, Minnesota, this 3rd day of November, 1997.

Lawrence Herman Crosby
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7. *Braid of Feathers*, Frank Pommersheim. Berkeley University of California Press, 1995.

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APPENDIX

Appendix A - Order of the Supreme Court, dated August 5, 1997 ..... 1a

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APPENDIX A

STATE OF MINNESOTA
IN SUPREME COURT
C8-96-2447

In Re the Marriage of:

Bruce Edward Campbell, petitioner,

Appellant,

v.

Jo Lynne Campbell,

Respondent.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Bruce Campbell for further review be, and the same is, denied.

Dated: August 5, 1997

BY THE COURT:

s/s
Chief Justice

APPENDIX B

1997 WL 292321, Marriage of Campbell, In re, (Minn. 1997)

***292321** In Re the Marriage of: Bruce Edward CAMPBELL, petitioner, Appellant,
v.
Jo Lynne CAMPBELL, Respondent.

No. C8-96-2447.
Supreme Court of Minnesota.
Filed June 3, 1997

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Considered and decided by HUSPENI, Presiding Judge, WILLIS, Judge and SCHULTZ, (FN*) Judge.

UNPUBLISHED OPINION

HUSPENI, Judge.

****1** Appellant argues the district court lacks continuing jurisdiction over child support issues resulting from a dissolution decree because respondent and the parties' children reside in another jurisdiction, and appellant is an enrolled member of the Mdewakanton Dakota Tribe, residing on the tribal reservation. Because we find that the appellant waived his jurisdictional claim, we affirm.

FACTS

On December 20, 1989, appellant Bruce Edward Campbell filed a petition with Goodhue County District Court seeking a dissolution of his marriage to respondent Jo Lynne Campbell. Appellant and the two children of the marriage are enrolled members of the Prairie Island Mdewakanton Dakota Tribe, but they did not live on the reservation during the dissolution proceedings. (FN1)

In June 1990, the district court dissolved the marriage, granted physical custody of the minor children to respondent, and ordered appellant to pay $500 per month child support. Based on subsequent motions brought by respondent and appellant, respectively, the district court modified support payments in December 1991 and May 1992. Later in 1992, respondent and the children moved to Alabama.

In July 1996, respondent moved Goodhue County District Court to modify visitation and child support. Appellant responded with a motion for a change in custody, an appointment of a guardian ad litem, an accounting, a contempt order, and an award of attorney fees. In August 1996, the district court modified visitation, increased appellant's child support obligations to $1,500 per month, ordered appellant to establish automatic income withholding per Minn.Stat. § 518.613, denied appellant's motions, and refused to award attorney fees to either party. Neither party appealed from the August 1996 order, nor did appellant comply with the provisions of that order regarding child support and wage withholding.

On October 1, 1996, respondent moved the district court to find appellant in contempt and requested attorney fees. At the October 18, 1996, district court hearing, appellant moved the

court to find it lacked continuing jurisdiction and requested that the case be venued before the Mdewakanton Dakota Tribal Court, arguing that tribal sovereignty was superior, that the tribe could not be sued without consent, and that the district court's order illegally required the tribal court to issue an order for child support. This appeal resulted from the district court's denial of appellant's motions.

DECISION

Appellant argues: (1) that the district court lacks jurisdiction to resolve family law and child support matters between Indians and non-Indians; (2) that the district court does not retain subject matter jurisdiction when a party moves onto an Indian reservation; (3) that respondent waived district court jurisdiction by establishing a residence in Alabama; (4) that the tribal court is a more convenient forum and (5) that the district court order illegally required the tribal court to do its bidding.

**2 A reviewing court is not bound by a district court's legal conclusions and will make its own determination on jurisdictional questions. *Becker County Welfare Dep't v. Bellcourt,* 453 N.W.2d 543, 544 (Minn.App.1990), *review denied* (Minn. May 23, 1990). We find each of appellant's arguments to be without merit.

1. State jurisdiction over child support and maintenance obligations between Indians and non-Indians.

Appellant argues that Public Law 280, codified as amended at 18 U.S.C. § 1162 (1994), 25 U.S.C. §§ 1321-1324 (1994), and 28 U.S.C. § 1360 (1994), does not grant subject matter jurisdiction over tribal members who reside on a reservation. We cannot agree. Public Law 280 (28 U.S.C. § 1360(a) (1988)),

provides that Minnesota state courts shall "have jurisdiction over civil causes of action between Indians or to which Indians are parties," except with regard to the Red Lake Reservation. *Cohen v. Little Six, Inc.*, 543 N.W.2d 376, 381 (Minn.App.1996), *aff'd without opinion* (Minn. Jan. 21, 1997); *accord Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 289 (Minn.1996), *pet. for cert. filed*, 65 USLW (Jan. 29, 1997).

> [C]ivil laws * * * of general application to private persons or private property shall have the same force and effect within * * * Indian country as they have elsewhere within the State * * *.

28 U.S.C.A. § 1360(a) (West Supp.1997). Civil laws that are of general application include, among others, laws of marriage and divorce. *Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 385 n. 10, 96 S.Ct. 2102, 2108 n. 10, 48 L.Ed.2d 710 (1976). (FN2) Therefore, the district court has subject matter jurisdiction to resolve family law and child support matters between Indians and non-Indians.

2. Continuing subject matter jurisdiction when a party subject to a dissolution decree moves onto an Indian reservation.

We further conclude that appellant's move to the reservation after the 1990 dissolution did not deprive the Minnesota courts of jurisdiction. Appellant cites several cases to argue that a state court does not have subject matter jurisdiction when state law is preempted by tribal law, or when state court jurisdiction undermines or infringes on the rights of Indians to govern themselves. The cases cited by appellant, however, are distinguishable. Here, unlike the cited cases, appellant's cause of action did not arise on the reservation, the tribe has not made any jurisdictional claim, (FN3) no associated petition or motion

has been brought before the tribal court, and the Mdewakanton Dakota Tribe is not a party to appellant's action. (FN4)

Of primary importance, we believe, is the fact that appellant voluntarily invoked the district court's jurisdiction by filing his 1989 dissolution petition, his motion for modification in May 1992, and his July 1996 motions in response to those of respondent. Appellant's July 1996 motions were heard on their merits and denied by the district court. Appellant did not appeal or seek other relief within the prescribed time period. The court's decisions on those motions become the law of the case and appellant has waived his jurisdictional claim. *See Peterson v. Eishen,* 512 N.W.2d 338, 340 (Minn.1994) (holding that a party submits to jurisdiction by invoking the power of the court or by implicitly recognizing the court's jurisdiction). *Desjarlait v. Desjarlait,* 379 N.W.2d 139 (Minn.App.1985), *review denied* (Minn. Jan. 31, 1986), is also persuasive on the issue of jurisdiction:

> **3 When a member of [an Indian Band] voluntarily invokes state court jurisdiction by filing a dissolution petition in the state court and the tribal code relinquishes jurisdiction over domestic matters to the state courts, the state court has subject matter jurisdiction to resolve child custody issues.

Id. at 140. (FN5) *See also Anderson v. Beaulieu,* 555 N.W.2d 537, 538 (Minn.App.1996) (holding that "in an action to * * * enforce child support obligations, the state court does not lack subject matter jurisdiction, because the alleged father, [a tribal member,] retained employment on the reservation after the action commenced.").

3. Respondent's waiver of jurisdiction.

The legislature has given the [district] courts continuing jurisdiction over dissolution proceedings by allowing modifications in custody, visitation, and maintenance and support unless an enforceable waiver of the statutory right to seek modification of maintenance exists.

Loo v. Loo, 520 N.W.2d 740, 743 (Minn.1994).

Appellant asserts that respondent waived district court jurisdiction by establishing a residence outside of Minnesota. We cannot agree, and note that appellant cites no authority for this proposition. Courts should not assume that parties have waived jurisdiction over dissolution proceedings "without a clear or express statement divesting the court of jurisdiction." *Id.* at 745. There is nothing in the record to indicate that respondent has expressly waived jurisdiction. Moreover, respondent's actions in seeking redress before the district court of Minnesota are wholly inconsistent with waiver. *See Peterson*, 512 N.W.2d at 340 (holding that a party submits to jurisdiction by invoking the power of the court).

4. Forum non conveniens.

Appellant argues that the tribal court is a more convenient forum. Appellant failed to raise this argument before the district court, and is precluded from raising it for the first time on appeal. A reviewing court must consider only those issues that the record shows were presented to and considered by the district court in deciding the matter before it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1982).

5. Income withholding payments.

Finally, appellant argues that the district court erred because

it ordered the tribe to automatically withhold a portion of appellant's income for child support payments. This argument is without merit. The district court's order states that

> [c]hild support payments shall be automatically withheld from [appellant's] income pursuant to Minn.Stat. § 518.613 by [appellant's] employer or other payor of funds, including the Prairie Island Mdewakanton Dakota Community, and forwarded to Goodhue County Social Services.
>
> * * * *
>
> [Appellant] shall be solely responsible for obtaining a valid Tribal Court Order for income withholding within 30 days of any child support order issued by the District Court.

**4. The district court does not require the tribe to do anything and the court's order does not refer to tribal money. The district court order relates to income appellant receives, from whatever source, and is available for his use. The district court has personal jurisdiction over appellant and the court's order requires *appellant* to accomplish what he can by requesting tribal income withholding; nothing more. Appellant, however, having failed to take any action as required by court order, attempts an interpretation wholly inconsistent with the unambiguous language of the order. Appellant's argument must fail.

Affirmed.

FN* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

FN1. The record indicates that the children have never resided

on the reservation. Appellant appears to live on the reservation presently. However, the record does not reflect when he began to live there; apparently, it was sometime after 1992.

FN2. Minnesota child custody and support laws are contained within the laws of marriage and divorce. *See* Minn.Stat. ch. 518 (1996).

FN3. While the record does include what appears to be tribal procedures regarding child support, the material does not indicate whether the tribe asserts or relinquishes subject matter jurisdiction in domestic matters.

FN4. *See Iowa Mut. Life Ins. Co. v. LaPlante,* 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987) (involving an insurer's duty to defend when incident was subject to a case before the tribal court); *California v. Cabazon Band of Mission Indians,* 480 U.S. 202, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987) (tribe brought action against the State of California seeking declaratory and injunctive relief); *Williams v. Lee,* 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959) (cause of action arising on Indian reservation); *In re Prairie Island Dakota Sioux,* 21 F.3d 302 (8th Cir.1994) (suit against tribe for alleged violations of federal and state law); *Duncan Energy Co. v. Three Affiliated Tribes,* 27 F.3d 1294 (8th Cir.1994) (action brought by energy company to enjoin three tribes from assessing and collecting taxes on business activities conduct on the reservation), *cert. denied,* 513 U.S. 1103, 115 S.Ct. 779, 130 L.Ed.2d 673 (1995); *Gavle,* 555 N.W.2d at 286 (where tribal business entity is a party to suit and causes of action occurred both within and outside of Indian country); *Cohen,* 543 N.W.2d at 377 (party being sued is a tribal business corporation created and controlled by the tribe; dispute arose entirely within the Indian reservation); *In re K.K.S.,* 508 N.W.2d 813, 815 (Minn.App.1993) (tribal court

asserted jurisdiction), *review denied* (Minn. Jan. 27, 1994); *Desjarlait v. Desjarlait,* 379 N.W.2d 139, 140 (Minn.App.1985) (tribal court involved with parties as a result of criminal convictions in the tribal court; tribal code relinquishes jurisdiction over domestic matters to state courts), *review denied* (Minn. Jan. 31, 1986).

FN5. While the trial court in *Desjarlait* determined that the Red Lake Band's tribal code relinquished jurisdiction over family matters to the state, such a determination is unnecessary here. There is no indication in the record that the Mdewakanton Dakota Tribe is asserting subject matter jurisdiction in this case or in domestic matters in general.

APPENDIX C

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF GOODHUE FIRST JUDICIAL DISTRICT

In Re the Marriage of File No. FX-89-3537

Bruce Edward Campbell,

Petitioner,

and FINDING OF FACT, CONCLUSIONS OF LAW,

Jo Lynne Campbell, AND ORDER

Respondent.

The above-entitled matter came on for hearing before the Honorable Peder B. Hong on October 18, 1996, at the Goodhue County Courthouse in Red Wing, Minnesota pursuant to a motion by respondent to hold petitioner in contempt of court for failure to pay child support.

Petitioner appeared with and by Lawrence H. Crosby, Esq. Respondent was represented by Suzanne Born, Esq.

The Court, having considered the arguments of counsel, and based upon all testimony, exhibits, affidavits, files, records, and proceedings herein, makes the following:

FINDINGS OF FACT

1. A Temporary Stipulation and Order was signed by both parties and was filed with this Court on December 21, 1989 in which petitioner was ordered to pay child support in the amount of $490.00 per month.

2. On June 27, 1990, Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree was filed with this Court and provided that petitioner pay $500.00 per month child support.

3. On December 4, 1991, this Court ordered a modification of petitioner's child support obligation to $840.00 per month due to substantial change in circumstances.

4. On May 15, 1992, a Stipulation and Order was filed with this Court modifying petitioner's child support obligation to $0.00.

5. On August 7, 1996, an Order was filed with this Court modifying petitioner's child support obligations to $1,500.00 per month due to substantial chance in circumstances.

CONCLUSIONS OF LAW

1. That Goodhue County Court has had jurisdiction of the above-entitled matter since its commencement by service of Summons and Petitioner for Dissolution of Marriage on November 22, 1989.

2. That this Court had jurisdiction of the above-entitled matter on August 7, 1996, the date of the issuance of Judge King's Order.

3. That this Court has jurisdiction to enforce Judge King's

Order of August 7, 1996.

ORDER

1. That petitioner's motion to remove this matter and venue it in Tribal Court for the Prairie Island Indian Community rather than in Minnesota District Court, Goodhue County is hereby **DENIED**.

2. That petitioner's motion to prevent the enforcement of the child support order in this Court is hereby **DENIED**.

3. That the parties shall appear for a hearing on all issues, save the jurisdictional issue which has been ruled upon, on November 26, 1996 at 1:00 p.m.

4. That the attached memorandum is made a part hereof.

DATED: November 12, 1996

BY THE COURT:
s/s Peder B. Hong
Judge of District Court

MEMORANDUM

I. Introduction

Petitioner raises the issue that this Court does not have on-going jurisdiction over these parties or their dissolution proceedings or any proceedings regarding child support.

II. Public Law 280

State laws "may be applied to tribal Indians on their reservations if Congress has expressly so provided." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 107 S. Ct. 1083, 1087, 94 L. Ed. 2d 244 (1987), **superseded on other grounds by** 25 U.S.C. Sections 2701-2721 (1994). Public Law 280 (28 U.S.C. Section 1360(a)(1988)) provides Minnesota state courts shall, except with regard to activities occurring on the Red Lake Reservation, "have jurisdiction over civil causes of action between Indians or to which Indians are parties." *Cohen v. Little Six, Inc.*, 543 N.W.2d 376 (App. Ct. 1996); *Gavle v. Little Six, Inc.*, Finance and Commerce, Nov. 1, 1996, 23, 24 (Minn., Oct. 31, 1996). Civil laws that are of "general application to private persons or private property" have full force and effect in Indian country. 28 U.S.C.A. Section 1360(a) (Supp. 1989). As quoted in *Becker County Welfare Department v. Bellcourt*, 453 N.W.2d 543, 544 (App. Ct. 1990),'Civil laws of general application include laws of "contract, tort, marriage, divorce, insanity, descent, etc."' *Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 384, 48 L. Ed. 2d 710, 96 S. Ct. 2102 n.10 (1976) (quoting Israel & Smithson, *Indian Taxation, Tribal Sovereignty and Economic Development*, 49 N.D.L. Rev. 267, 296 (1973)).

The petitioner and the two minor children are enrolled members of the Prairie Island Indian Community. The present case concerns a dissolution of marriage which clearly falls under the category of "civil laws of general application to private persons." Public Law 280 has provided and continues to provide this Court with the jurisdiction to rule on issues arising in this matter.

III. Voluntarily Invoked Jurisdiction

Prior to the enactment of Public Law 280, the Minnesota

Court of Appeals discussed the issue of an enrolled member of an Indian Tribe voluntarily invoking state court jurisdiction in the dissolution proceeding entitled *Desjarlait v. Desjarlait*, 379 N.W.2d 139 (App. Ct. 1985). The Court held the following:

> Because Stuart voluntarily invoked state court jurisdiction when he filed his petition for dissolution and because the tribal code relinquished jurisdiction over domestic matters to the state courts, the county court had subject matter jurisdiction over child custody matters of members of the Red Lake Band of Chippewa Indians.

Id. at 145.

The Court continued by stating:

> Moreover, in the petition, Stuart sought child custody and child support. Nowhere in the petition did Stuart even suggest that the county court lacked subject matter jurisdiction.

Id. at 142.

Petitioner voluntarily invoked the jurisdiction of this court when he filed his petition for dissolution on November 22, 1989. Since the commencement of this case, there have been five Orders decided by this Court concerning which Petitioner has appeared. Petitioner has no valid factual grounds in which to assert that this court has not retained jurisdiction in this matter.

IV. Continuing Jurisdiction Unless Waived

District courts have continuing jurisdiction over dissolution proceedings "unless an enforceable waiver of the statutory right

to seek modification of maintenance exists." *Loo v. Loo*, 520 N.W.2d 740, 743 (Minn. 1994). The waiver of such a right must contain "express words divesting the district court of jurisdiction to modify spousal maintenance." See *id.* at 745.

Because the jurisdiction of this court has not been waived, this court will continue exercising jurisdiction over this dissolution proceeding.

P.B.H.

APPENDIX D

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF GOODHUE FIRST JUDICIAL DISTRICT

Family Court Division

In Re the Marriage of:

File No. FX-89-3537

Bruce Edward Campbell,

Petitioner,

-vs- FINDINGS AND ORDER

Jo Lynne Campbell,

Respondent.

The above-entitled matter came duly on for hearing before the undersigned Judge on July 24, 1996, at the Goodhue County Courthouse in Red Wing, Minnesota, pursuant to a motion by Respondent to increase Petitioner's child support obligation. Petitioner appeared with and by Maury D. Beaulier. Respondent appeared with and by Suzanne Born.

Based upon the arguments of counsel, and upon all of the files, records and proceedings herein, the Court makes the following:

FINDINGS:

1. There has been a substantial change of circumstances since entry of the Judgment and Decree of Dissolution in that, with the consent of the Petitioner, Respondent moved with the children to the State of Alabama in September, 1992 and continues to reside there. As a result of such move, difficulties have arisen with respect to the scheduling of parenting access time for Petitioner during the summer.

2. There has been a substantial change of circumstances since entry of the most recent child support Order on May 15, 1992, and the determination by the tribe on November 10, 1994, such that the current amount of support is unfair and unreasonable.

3. The children's present environment does not endanger the children's physical or emotional health, and does not impair the children's emotional development.

4. The Petitioner's contempt motion was not personally served upon the Respondent. Therefore, the Court has no jurisdiction to hear the motion.

5. The Petitioner has not provided the Court with sufficient information to allow the Court to make a definitive determination of Petitioner's income from the Tribe. Pending said information, the Court determines that Petitioner's net monthly income from the Tribe is approximately $5,000.00.

Based upon the above Findings, the Court;

ORDERS:

1. That Paragraph 2 of the Judgment and Decree of Dissolution dated June 27, 1990 is vacated and amended to

provide:

CHILD CUSTODY AND VISITATION. The parties are awarded joint legal custody of their children:

Constance Victoria Campbell, age 9, d.o.b. September 22, 1986; Tasha Lee Campbell, age 6, d.o.b. March 20, 1990;

as defined in the Minn. Stat. 518.003, subd. 3(a)(b).

Respondent is awarded primary physical custody of the children subject to Petitioner's right to parenting access time as follows: Six weeks during the children's summer vacation beginning one week after the last day of school and ending six weeks later; seven days during the Christmas break, including Christmas day in alternating years; spring vacation break; and such other times as the parties may agree in writing. Petitioner shall be solely responsible for bringing the children to Minnesota for parenting access times and, if he is not employed, returning them to Alabama. If Petitioner is employed, Respondent shall be responsible for returning the children to Alabama. In the event a dispute arises with respect to visitation, both parties shall first submit the dispute to a visitation expediter pursuant to Minn. Stat. 518.1751 (1995).

2. That paragraph 1 of the Judgment and Decree of Dissolution dated June 27, 1990 is vacated and amended to provide:

CHILD SUPPORT. That Petitioner pay to Respondent child support in the amount of $1,500.00 per month commencing July 1, 1996, payable in equal installments on the 1st and 15th days of each month. Child support shall

continue for the minor children until each attains the age of 18 years, or is attending secondary school and has not attained the age of 20, is otherwise emancipated, or further order of the Court. Child support payments shall be subject to biennial cost-of-living adjustments pursuant to Minn. Stat. 518.641 (1995). Existing child support arrearages, if any are expressly reserved and not merged herein.

Child support payments shall be automatically withheld from Petitioner's income pursuant to Minn. Stat 518.613 by Petitioner's employer or other payor of funds, including the Prairie Island Mdewakanton Dakota Community, and forwarded to Goodhue County Social Services. Petitioner's social security number is 474-62-2087.

Petitioner must provide to Goodhue County Social Services, and Respondent, information relating to any change in employment by providing the name and address of any subsequent employer so that the new employer can be notified of the income withholding.

The attached Appendix A-AIW is incorporated herein by reference. Petitioner shall be solely responsible for obtaining a valid Tribal Court Order for income withholding within 30 days of any child support order issued by the District Court.

3. Petitioner shall maintain medical and dental insurance for the benefit of the children and pay one-half of the children's unreimbursed medical and dental expenses as follows:

Respondent shall provide to Petitioner verification of his share of the expenses on a quarterly basis and include with this verification a written request for payment of a specific

dollar amount. Petitioner shall reimburse Respordent for his share of the unreimbursed expenses within thirty (30) days of receipt of verification of the amount owed.

If Petitioner fails to reimburse Respondent within the thirty (30) day time period, Respondent may inform Goodhue County Support and Collection Services in writing of Petitioner's failure to comply with this provision and include written verification of Petitioner's portion of the unreimbursed expenses.

Goodhue County Support and Collection Services shall serve notice of the documented expenses on Petitioner at his last known address. Notice shall include a letter from Goodhue County Support and Collection Services with an attached affidavit of Respondent outlining Petitioner's portion of the expenses. Documented proof of the expenses shall also be attached to Respondent's affidavit. The original affidavit, including attachments, and a copy of Goodhue County's letter, with proof of service by mail shall be filed with the Court. Petitioner shall have twenty (20) days form the date of service to either pay the expenses owed or bring an appropriate motion contesting the alleged expenses. In the event he fails to do either of the above, the amount of unreimbursed expenses as set forth in Respondents affidavit shall be added on to Petitioner's account as additional child support arrears and collected accordingly.

It is the obligation of Respondent to provide Petitioner and Goodhue County Support and Collection Services with complete and accurate verification of Petitioner's portion of unreimbursed expenses and cooperate with Goodhue County Support and Collection Services in the completion of all necessary affidavits and other documents. Goodhue County Support and Collection Services shall not be responsible for the collection of any

undocumented expenses.

4. Petitioner shall contribute toward the child care expenses incurred by Respondent as determined by Minn. Stat. 518.551, subd. 5 (1995).

5. Petitioner shall obtain an enforceable Order from the Prairie Island Mdewakanton Dakota Tribal Court for payment of the child support, including medical and child care, and other provisions set forth herein, within 30 days of the date of District Court Order, and provided written verification to Respondent's attorney that such Tribal Court Order has been issued.

6. Attorney's fees shall not be awarded to either party.

7. Petitioner's motions are denied in their entirety.

8. Upon the Court's receipt of an affidavit from an official of the Tribe who has authority over the Tribe's per capita payment account detailing the payments that are made to the Petitioner from the account, the Court will reconsider the issue of child support amounts without further motion from either party. Any such affidavit must have attached to it copies of checks that have been paid to the Petitioner from the tribe since January 1, 1994, if any.

Date: Aug.7, 1996

BY THE COURT:

S/S
Robert R. King, Jr.
Judge of District Court

APPENDIX E

THE COURT: Well, so far I've heard you say there is a jurisdictional question and there is a comity question. And I'll entertain those issues.

Supreme Court, U.S.
FILED
DEC 10 1997
CLERK

(2)

No. 97-776

In the
Supreme Court of the United States
October Term, 1997

In re the Marriage of

BRUCE EDWARD CAMPBELL,

Petitioner,

v.

JO LYNNE CAMPBELL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MINNESOTA

BRIEF OF RESPONDENT IN OPPOSITION

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23 pp

QUESTION PRESENTED

Does the Minnesota state district court have continuing subject matter to enforce, by a contempt proceeding, its valid order pertaining to visitation and child support where one of the parties is a member of an Indian Tribe?

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Respondent responds to and opposes the Petition for Writ of Certiorari of the Order of the Minnesota Supreme Court denying review of the decision of the Minnesota Court of Appeals affirming the state district court order.

STATEMENT OF LEGAL ISSUES AND THEIR RESOLUTION BY THE MINNESOTA COURT OF APPEALS

Does the state district court have jurisdiction over child support and maintenance obligations between Indians and non-Indians? The Minnesota Court of Appeals held yes.

Does the state district court have continuing subject matter jurisdiction when a party subject to a dissolution decree moves onto an Indian reservation? The Minnesota Court of Appeals held yes.

Did Respondent waive the jurisdiction of the state district court of Minnesota by establishing a residence outside the State of Minnesota? The Minnesota Court of Appeals held no.

The Minnesota Court of Appeals held that Petitioner, having failed to raise the issue of forum non conveniens at the trial court, was precluded from raising it for the first time on appeal.

Did the district court order the Tribe to automatically withhold a portion of Petitioner's income for child support payments? The Minnesota Court of Appeals held no.

THE CRITERIA FOR REVIEW PART III RULE 10, RULES OF THE SUPREME COURT OF THE UNITED STATES ARE NOT SATISFIED IN THIS CASE

The decision in question is not a decision of the United States Court of Appeals.

The Minnesota Supreme Court in denying further review of a decision of the Minnesota Court of Appeals did not

consider an important federal question and there is no conflict with other state court decisions which have addressed the issue presented in this case.

The Minnesota Supreme Court has not decided an important question of federal law that should be settled by the United States Supreme Court. The Minnesota Court of Appeals decision does not conflict with relevant decisions of the United States Supreme Court. The Petition for Certiorari should be denied.

STATEMENT OF THE CASE

Petitioner, a member of the Prairie Island Mdewankanton Dakota Tribe, initiated a marriage dissolution action in state district court in 1989. Respondent is not a member of the Tribe. Following entry of the decree, both parties sought further relief from the state district court at various times. In July, 1996, both parties sought affirmative relief from the state district court concerning the issues of child custody, visitation, and child support. On August 7, 1996, the state district court issued an Order addressing the merits of all of the issues raised by each party. Petitioner did not appeal from that Order.[1]

Petitioner failed to comply with provisions in the August 7, 1996 Order pertaining to the payment of child support and income withholding. Respondent brought a Motion to find Petitioner in constructive civil contempt. At the hearing on the Motion, Petitioner argued that the state district court lacked jurisdiction to find him in contempt for failure to obey the Court's August 7, 1996 Order.

In an Order dated November 12, 1996, the state district court ruled that it had subject matter jurisdiction to find

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[1] Pursuant to Rule 104.01, Minnesota Rules of Civil Appellate Procedure, the August 7, 1996 Order became final and enforceable on September 15, 1996, 30 days after the Notice of Entry of Order was served on Petitioner.

Petitioner in contempt and scheduled the matter for an evidentiary hearing. Petitioner appealed that Order to the Minnesota Court of Appeals.

In a unanimous unpublished decision[2] filed June 3, 1997, the Minnesota Court of Appeals upheld the state district court's finding of continuing subject matter jurisdiction. In an Order dated August 5, 1997, the Minnesota Supreme Court denied Petitioner's request for further review.

ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

The issue in this case is simple. Does the Minnesota state district court have subject matter jurisdiction to find Petitioner in constructive civil contempt for his refusal to obey a valid state district court Order? The Minnesota state district court, the Minnesota Court of Appeals, and the Minnesota Supreme Court all decided in the affirmative.

The existence of a tribal court and tribal judicial code alone is insufficient to divest the state district court of continuing subject matter jurisdiction of a proceeding over which it has exercised continuous jurisdiction since 1989. As the Minnesota Court of Appeals correctly noted, Petitioner's cause of action did not arise on the reservation, the tribe has not made any jurisdictional claim, no associated petition or motion has been brought before the tribal court, and the Mdewakanton Dakota Tribe is not a party to this action.

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[2] Whether an opinion is published is guided by Minn. Stat. § 480A.08 subd. 3 (1997), which provides for publication of opinions which establish a new rule of law, overrule a previous Court of Appeals decision not reviewed by the Minnesota Supreme Court, provide important procedural guidelines in interpreting statutes or administrative rules, involve a significant legal issue or significantly aid in the administration of justice. All other opinions are unpublished. Special Rules of Practice for the Minnesota Court of Appeals, Rule 4 (1997).

The interests of the Tribe in this matter are minimal at best. The state district court's continual assertion of jurisdiction over Petitioner to insure that he comply with a valid state district court order for, among other things, payment of child support, does not in any way infringe on the development of a tribal family law code and tribal court system.

In his appeal to the Minnesota Court of Appeals, Petitioner claimed the state district court did not have continuing jurisdiction. In fact, it is the tribal court which does not have jurisdiction. Petitioner ignores the fact that Respondent is not subject to the personal jurisdiction of the tribal court.

Petitioner also ignores the fact that he sought affirmative relief, in 1989, 1992, and 1996, from the same state district court which he claimed, in his appeal to the Minnesota Court of Appeals, does not have continuing jurisdiction. The Minnesota Court of Appeals noted that it was of primary importance in reaching its decision that Petitioner voluntarily invoked the state district court's jurisdiction.

In his Petition for Review to the Minnesota Supreme Court, Petitioner conceded that the state district court has subject matter jurisdiction but argued that the state court should defer to the tribal court. There is nothing to defer to as there is no action pending in tribal court.

Petitioner continues to mischaracterize the issue in this case. He claims in his Petition for Writ of Certiorari that the state district court is attempting to divest the tribal court of jurisdiction. The tribal court is not asserting jurisdiction in this case. The tribal court does not have jurisdiction to find Petitioner in contempt for failing to comply with a state district court order.

Ordering Petitioner to pay child support pursuant to the Minnesota child support guidelines and to have his child support payment automatically withheld from his income does not in any way undermine the authority of tribal courts over

reservation affairs or infringe on the rights of Indians to govern themselves.

The state district court Order dated August 7, 1996, directed Petitioner to "obtain an enforceable Order from the Prairie Island Mdewakanton Dakota tribal court for payment of his child support, ..." Brief of Petitioner, Appendix D page 22a. There is nothing in the language of the state district court Order that requires the Tribe to do anything.

Title 3: Domestic Relations Judicial Code of the Prairie Island Mdewakanton Dakota Community Chapter II Section 8 states "[t]he tribal court may order a delinquent obligor to authorize the Tribal Council to withhold his or her child support obligation from each per capita payment until the child support obligation expires or is terminated."[3] This provision pertains only to obligors and does not require any action by a person, such as Respondent, who is entitled to receive child support payments.

If Petitioner took all possible steps to obtain the tribal court order and was unsuccessful, the district court could not find him in contempt for failure to obtain the order for income withholding. But as the Minnesota Court of Appeals recognized, Petitioner did nothing to even attempt to obtain an income withholding order from the Tribe. Brief of Petitioner, Appendix B, page 8a. If he had paid child support as ordered, Respondent would not have brought a Motion to find him in contempt.[4]

There is an absolute state interest in upholding the decision of the Minnesota state district court, the Minnesota Court of Appeals, and the Order of the Minnesota Supreme Court denying further review. A state district court has

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[3] Petitioner's per capita payments were subject to an income withholding order from December, 1994 through April, 1996.

[4] Petitioner has not been found in contempt. The matter has not been returned to state district court because Petitioner is current in payment of child support.

continuing subject matter jurisdiction to enforce its own orders in a civil contempt action. Any other outcome would create chaos whenever a tribal member was a party in a state court action as the tribal member could ignore, without consequence, any state district court order with which he disagreed.

THE STATE DISTRICT COURT HAS CONTINUING SUBJECT MATTER JURISDICTION TO ENFORCE ITS PRIOR VALID ORDERS

The state district court correctly determined in its Order dated November 12, 1996 that it has continuing subject matter jurisdiction to enforce its Order dated August 7, 1996 regarding the payment of ongoing child support.

In Desjarlait v. Desjarlait, 379 N.W.2d 139, 141 (Minn. App. 1985) review denied (Minn. Jan. 31, 1986), the Court of Appeals held that a tribal member voluntarily invokes the jurisdiction of the state court when he files a petition for marriage dissolution. Petitioner in this case voluntarily submitted to the jurisdiction of the state district court by filing a petition for dissolution of the parties' marriage in 1989. He subsequently sought affirmative relief from the district court on two occasions, in May, 1992, and again in July, 1996 after the tribal court had enacted its own Judicial Code concerning Domestic Relations.[5]

There is a long standing rule in federal courts that jurisdiction is determined at the time a suit is filed and, after vesting, cannot be ousted by subsequent events, including action by the parties. Berke, et al. v. Resolution Trust Corporation, 483 N.W.2d 712, (Minn. App. 1992) citing F. Alderete Gen Contractors, Inc. v. United States, 715 F.2d

[5]Title Three of the Prairie Island Mdewankanton Dakota Community Judicial Code, pertaining to Domestic Relations, was adopted on December 10, 1992.

1476, 1480 (Fed. Cir. 1983). This general principle is followed in Minnesota. See Jasperson v. Jacobson, 224 Minn. 76, 82-83, 27 N.W. 716, 788, 793 (1947).

Petitioner's argument in his appeal to the Minnesota Court of Appeals, that the state district court lost jurisdiction over the issue of enforcement and modification of child support because Respondent and the children reside in Alabama, and he moved to the reservation **after** service of the Motion to find him in constructive civil contempt, is contrary to well settled Minnesota case law. This exact issue, whether subsequent actions of the parties divests the state district court of continuing jurisdiction, was specifically addressed in Anderson v. Beaulieu, 555 N.W.2d 537 (Minn. App. 1996). The Minnesota Court of Appeals held that Beaulieu's action after the action had been commenced did not deprive the state district court of subject matter jurisdiction. Furthermore, the court concluded that a tribe's interest in self-governance is outweighed by the state interest in securing child support payments. Id. at 541.

No tribunal has civil contempt power to enforce an order of another tribunal. Furthermore, the State of Minnesota provides services to Respondent in the form of collecting child support payments, pursuant to Title 42, U.S.C. Chapter 7, Subchapter IV-D. If Petitioner should receive income from sources other than the tribe, Respondent would need a state district court order to obtain withholding from that source. Minnesota has a strong interest in retaining jurisdiction to continue to provide federally mandated child support services to Respondent,[6] and to insure compliance with its own valid district court orders.

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[6] Petitioner is mistaken in his claim on page 10 of his brief that the State of Minnesota is not providing services to Respondent. Child support payments are collected by Goodhue County, Minnesota in accordance with Minnesota and federal law.

THE TRIBAL COURT DOES NOT HAVE PERSONAL JURISDICTION OVER RESPONDENT

Respondent is not Indian and not a member of the Tribe. Although the children are enrolled members of the Tribe, they have never resided on the reservation. Respondent and both children have resided in the State of Alabama since September, 1994. Respondent has never done anything to subject herself to the personal jurisdiction of the tribal court. Even when the matter in state district court involves only tribal members and their children, the Minnesota Court of Appeals has determined that the district courts have subject matter jurisdiction. See e.g., Anderson v. Beaulieu, 555 N.W.2d 537 (Minn. App. 1996); Becker County Welfare Department v. Bellcourt, 453 N.W.2d 543 (Minn. App. 1985) review denied (Minn. Jan. 31, 1986); State of Minn. ex rel. Donnell v. Jourdain, 374 N.W.2d 204 (Minn. App. 1985); but see In re the Matter of the Custody of K.K.S., 508 N.W.2d 813 (Minn. App. 1993).

In re the Matter of the Custody of K.K.S., 508 N.W.2d 813 (Minn. App. 1993) is distinguishable from the present case in that unlike the non-Indian parent in K.K.S. who had subjected himself to the authority of tribal court by choosing to live on the reservation, Respondent has never resided on the reservation. Furthermore, in K.K.S., the state district court declined jurisdiction almost as soon as the pleadings were filed. In the instant case, the state district court has been exercising continuous jurisdiction since 1989, issuing orders in 1989, 1990, 1991, 1992, and 1996.

THE PRINCIPLE OF COMITY DOES NOT SUGGEST THAT THE STATE COURT DEFER TO THE TRIBAL COURT

Blacks Law Dictionary defines Judicial Comity as the principle in accordance with which the courts of one state or

jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. It is not a rule of law but one of practice, convenience and expediency. It has a substantial value in securing uniformity of decision and discouraging repeated litigation of the same question. Mast, Foos & Co. v. Stover Mfg. Co., 177 U.S. 485, 488, 20 S. Ct. 708, 44 L.Ed. 856 (1900).

Petitioner's argument of comity does not make sense. Respondent would be substantially prejudiced by having to **relitigate** an issue in tribal court which was decided in state district court. Both parties' motions were argued at the July 24, 1996 hearing and decided on the merits. Petitioner and Respondent were personally present in state district court. The only issue now before the state district court is its jurisdiction to enforce the August 7, 1996 Order.

Petitioner admits that he wants to be in tribal court because he believes he will be ordered to pay less child support. This is blatant forum shopping, not comity. If a tribal member can litigate in state court, and then, not liking the decision, relitigate in tribal court, state district court decisions will be meaningless whenever a tribal member is a party.

PUBLIC LAW 280 GRANTS CONTINUING SUBJECT MATTER JURISDICTION TO THE STATE DISTRICT COURT IN THIS CASE

Petitioner argues that Public Law 280, codified as amended at 18 U.S.C. § 1162 (1994), 25 U.S.C. §§ 1321-1324 (1994), and 28 U.S.C. § 1360 (1994), relied on by the state district court in its memorandum in support of the November 12, 1996 Order, does not grant jurisdiction to the state in this case. Petitioner's position is contradicted by the decision in Becker County Welfare Department v. Bellcourt, 453 N.W.2d 543 (Minn. App. 1990), where the Minnesota

Court of Appeals held that Public Law 280 authorizes state courts to exercise jurisdiction in child support cases involving one or more tribal members.

Civil laws that are of "general application to private persons or private property" have full force and effect in Indian country. Becker at 544 citing 28 U.S.C.A. § 1360(a) (Supp. 1989). Civil laws of general application include laws of "contract, tort, marriage, divorce, insanity, descent, etc." Bryan v. Itasca County, Minnesota, 426 U.S. 373, 384 n. 10, 96 S. Ct. 2102, 2108-09 n.10, 48 L.Ed.2d 710 (1976) (emphasis added). In Becker, both parties and the child were not only members of the tribe but resided on the reservation. Nevertheless, the Minnesota Court of Appeals concluded that the state district court had jurisdiction to collect child support.

Petitioner argues, on page 10 of his Brief, that Public Law 280 provides that "[a]ny tribal ordinance ... shall, if not inconsistent with the applicable civil law of the State, be given full force and effect." Earlier in his argument on page 8, Petitioner states that "[t]he Minnesota child support guidelines differ significantly from the Prairie Island child support guidelines ... " In his brief to the Minnesota Court of Appeals, Petitioner freely acknowledged that the reason he wants this matter in tribal court is his hope for a lower amount of child support. Since there is some inconsistency between the tribal ordinance and state civil law, the state law must control in this case.

The cases cited by Petitioner in support of his argument that Public Law 280 deprives the state district court of jurisdiction to use its contempt powers to enforce a valid state district court order are distinguishable from the instant case. Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959) involved a cause of action arising on the reservation. Ex Parte Crow Dog, 109 U.S. 556, 3 S.Ct. 396, 27 L.Ed. 1030 (1883) involved a criminal prosecution of a murder of an Indian by an Indian occurring on the reservation. Fisher v. District Court, 424 U.S. 382 (1976) dealt with an adoption

proceeding arising on the reservation in which all of the parties were members of the Tribe, residing on the reservation.

In Iowa Mutual Insurance Co. v. LaPlante, 480 U.S. 9, 107 S. Ct. 971, 94 L.Ed.2d 10 (1987), the suit was originally commenced in tribal court. Similarly, National Farmers Union Insurance companies v. Crow Tribe of Indians et al., 471 U.S. 845, 105 S. Ct. 2447, 85 L.Ed.2d 818 (1985) also dealt with an action originally commenced in tribal court. No suit has been commenced in tribal court in the instant case.

Santa Clara Pueblo et al. v. Martinez et al., 436 U.S. 49, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978) was an action for declaratory and injunctive relief by a tribal member against the Tribe regarding interpretation of a tribal ordinance. Washington et al. v. Confederated Tribes of the Colville Indian Reservation et al. 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) involved the issue of the right of the state to impose state taxes and regulations to transactions and activities occurring on the reservation.

Montana v. United States, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981) involved interpretation of treaties as they related to a tribe's ability to regulate hunting and fishing. In holding that the state of Montana had the authority to regulate fishing and hunting on the bed of the river passing through the reservation, and that the Tribe had no right to regulate hunting and fishing on land within the reservation owned by non-Indians, the Court stated that the Tribe's inherent sovereignty does not support regulation of non-Indian activities. Indian Tribes have lost many of the attributes of sovereignty, particularly as to relations between the tribe and non-members of the tribe. See, United States v. Wheeler, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978). Exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations cannot survive without express congressional delegation.

California v. Cabazon Band of Mission Indians, 480 U.S. 202, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987), dealt with the

issue of the jurisdiction of the state to regulate behavior on the reservation. The Court in Cabazon specifically noted that Public Law 280 as codified in 18 U.S.C. § 1162(a) (1994) limits a state's jurisdiction in civil matters to private civil litigation.

The underlying cause of action giving rise to this contempt proceeding is exactly the type of action contemplated by Congress in enacting 18 U.S.C. § 1162 (a) (1994), granting jurisdiction to state courts. This is doubly so where the only issue before the state court is its ability to insure compliance with a validly issued order for the payment of child support.

THE EXERCISE OF STATE COURT JURISDICTION IN THIS MATTER WILL NOT UNDERMINE THE TRIBE'S RIGHT TO SELF-GOVERNMENT

In cases involving the assertion of a right by the state against a member of a tribe, the issue of the right of the state to assert subject matter jurisdiction depends on whether the action of the state will undermine the tribe's right of self-government. Red Lake Band of Chippewa Indians v. State, 311 Minn. 241, 246, 248 N.W.2d 722, 726 (1976). In Red Lake, the Minnesota Supreme Court recognized three principles of law:

1. The State of Minnesota has no authority to govern the affairs of persons within the territorial boundaries of the reservation except as specifically authorized by Congress.

2. The State of Minnesota has authority to require that tribal members submit to the jurisdiction of the state with respect to activities occurring outside the boundaries of the reservation.

3. The State should not, in the absence of a compelling state interest, impose burdens upon tribal members when such burdens will undermine the effectiveness of the band's efforts to achieve effective self-government.

Addressing the first principle, the state district court in the instant case is not attempting to govern the affairs of a person within the territorial boundaries of the reservation. The only issue is the state court's jurisdiction to enforce a prior order, issued as a result of an action in which Petitioner had sought affirmative relief from the court.

Under the second principle, the state district court has authority to require that tribal members submit to the jurisdiction of the state with respect to activities occurring outside the boundaries of the reservation. Here, the state district court is merely asserting its right to enforce a prior order issued following a hearing in which Petitioner sought affirmative relief from the state district court.

Turning to the third principle, the mere fact that the tribal court has a system in place for dealing with child support matters does not defeat the **continuing** jurisdiction of the state court over this issue. Petitioner does not contend that the tribal court has **exclusive** jurisdiction over domestic matters.

In a recent issue of the Prairie Island Tribal Community Newsletter, the Tribe advised its members as follows: "... if there is an existing State child support order, the Tribal member should bring a motion [in state court] to have it modified before starting an action in tribal court." (emphasis added). The tribe also advised its members that even if the tribal court has not ordered the Community to withhold child support from an obligor's per capita payment as ordered by the state court, the tribal member should not violate the state court order by refusing to pay support. Appendix 1.

THE TRIBAL JUDICIAL CODE PERMITS THE WITHHOLDING OF CHILD SUPPORT FROM MEMBER PER CAPITA PAYMENTS

Petitioner claims that the tribe does not permit withholding child support from per capita payments and that the state district court in its August 7, 1996 Order directed him to do something which he cannot do. This claim is simply not true. Petitioner's child support payments were withheld from his per capita payments from December, 1994 through April, 1996. After that date, payments could continue to be withheld from per capita payments if a tribal court order for withholding was obtained. The second paragraph of Title 3, Section 8 of the Prairie Island Mdewakanton Dakota Community Judicial Code provides:

> The tribal court may order a delinquent obligor to authorize the Tribal Council to withhold his or her child support obligation from each per capita payment until the child support obligation expires or is terminated.

THE DISTRICT COURT HAS JURISDICTION TO FIND PETITIONER IN CONTEMPT

The purpose of the contempt power is to provide the court with the means to enforce its orders. See Erickson v. Erickson, 385 N.W.2d 301, 304 (Minn. 1986). The trial court has broad discretion to hold a person in contempt. Id., see also Hopp v. Hopp, 279 Minn. 170, 156 N.W.2d 212 (1968). In a constructive civil contempt action, the objective of the court is to secure compliance with an order presumed to be reasonable. The Court "must be free to compel performance by methods which are speedy, efficient, and sufficiently flexible." Id. at 216.

Constructive contempt includes "disobedience of any lawful judgment, order or process of the court." Minn. Stat. § 588.01 subd. 3 (1996). Contempt may be punishable by fine, imprisonment, or both. Minn. Stat. § 588.01 (1996). Confinement, however, should not be directed to compel a party to do something which he is wholly unable to do. Id. A judge may refuse to accept inability to perform as an excuse for failure to comply if he is satisfied that the party directed to pay has not made a reasonable effort by means of his own selection to conform to an order well within his inherent, but unexercised, capacities. Id. at 217.

CONCLUSION

The state district court has continuing subject matter jurisdiction to enforce its valid Orders. The Petition for Writ of Certiorari should be denied.

Dated: December 10, 1997

Respectfully Submitted,

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Child Support - Common Questions

An increasing number of Tribal members have been contacting the Accounting and Family Health Departments with questions regarding child support obligations. **Be advised that the "answers" will vary depending on your individual circumstances. Before taking any action, we urge you to consult with an attorney who practices in the area of child support and family law.**

1. Q: Are the child support guidelines for the State of Minnesota consistent with the Community's guidelines as enforced in Tribal Court?

A. Yes. In most cases involving one child, the obligator is required to pay approximately 25% of his/her monthly net income for child support to the custodial parent regardless of whether the proceeding is in State or Tribal Court. "Net income" is an individual's gross income less federal and state tax withholdings and qualified pension deductions.

2. Q. If the Tribal Court has not ordered the Community to withhold my child support obligation, as ordered in State court, from my monthly per capita payment, should I still make the payment?

A. Yes, if you do not want to violate the state court order. The State court will continue to pursue collection of your child support obligation even though the Community did not make the withholding.

3. Q. If my income has significantly decreased within the last year, will my child support obligation automatically adjust downward?

A. No. If, for example, your child support obligation was set in state court at a time when your monthly per capita income was much higher, you will need to bring a motion in

the same court to have it readjusted to reflect your current income. At the same time, you may ask the court to credit you with the amount of money you paid beyond what was required by the guidelines. Although the court may refuse to order the credit, if it is allowed, your future payments may be lowered to reflect the credit.

4. Q. As a Tribal member and parent of a Tribal child, can I start a child support proceeding in tribal court?

A. Yes, in most instances Tribal Court will have jurisdiction to hear the case and establish support for the Tribal member child. However, depending upon the residence and source of income of the obligor, it may be necessary to have the Tribal child support order entered in State court. Also, if there is an existing State child support order, the Tribal member should bring a motion to have it modified before starting an action in Tribal Court.

5. Q. If I have not made my monthly child support payments, how far back in time may the court look in establishing the amount of money I owe?

A. In most instances, the court may go back three years in calculating the amount owed.

THE ABOVE "ANSWERS" ARE ONLY INTENDED TO PROVIDE GENERAL GUIDANCE IN RESOLVING YOUR CHILD SUPPORT ISSUES. YOU ARE ADVISED TO CONTACT AN ATTORNEY WITH YOUR PARTICULAR CHILD SUPPORT QUESTIONS.